IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

CRL.A.No. 759 of 2006()

SC.940/2000 OF COURT OF THE ADDL.SESSIONS JUDGE FOR THE TRIAL OF OF ABKARI ACT CASES,NEYYATTINKARA
CP.25/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA

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APPELLANT:

BIJU, S/O.VISWAMBHARAN,
C.NO.61, CENTRAL PRISON, THIRUVANANTHAPURAM.

BY ADV. PRADEEP K.P. (STATE BRIEF)

RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/11/2006, THE COURT ON 14/11/2006 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 759 of 2006

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Dated this the 14th day of November, 2006

JUDGMENT

Third accused in S.C.No.940/2000 on the file of the Court of the Addl. Sessions Judge for the Trial of Abkari Act Cases, Neyyattinkara is the appellant.

2. The appellant along with accused 1 and 2 were charge-sheeted for the offence punishable under section 55(a) of the Abkari Act on the allegation that they were found in possession of 15 litres of arrack in two jerrycans. The prosecution case against the appellant and other accused is that while CW5, the Sub Inspector of Police of Parassala Police Station, on petrol duty, he received information that arrack is being sold by two persons. He went to Parassuvaikkal desom. When he reached the public road leading from Parasuvaikkal to Manimala, he found three persons engaged in the sale of alcohol keeping in their possession two jerrycans, a white one of 10 litre capacity held by the 2nd accused and a black one of 5 litre capacity held by the appellant, each of the can, on examination, was found filled with arrack in contravention of the provisions of the Abkari Act. CW5, after complying with legal formalities, arrested the appellant

and the 2nd accused and later the 3rd accused surrendered before the trial court. PW3 who conducted the investigation filed the final charge before the court.

3. To prove the charge against the appellant, the prosecution examined PW1 to PW5 and Exts.P1 to P7 were marked. MO1 and MO2 were also marked. Relying on the evidence adduced by the prosecution both, oral and documentary, the trial court found the appellant and the 2nd accused guilty under section 55(a) of the the Abkari Act and they were convicted thereunder. They were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default simple imprisonment for a further period of three months. Hence, the appeal is filed challenging the conviction and sentence awarded against the appellant.

3. The learned counsel for the appellant submits that the reliance placed by the trial court on finding that the appellant was guilty under section 55(a) of the Abkari Act is irregular. The learned counsel also submits that the prosecution has failed to prove the identity of the appellant. The learned counsel further submits that CW5 who detected the crime was not examined to prove the prosecution case.

4. The case of the prosecution is that on 2-5-1998 while CW5 was on patrol duty, he found three persons were engaged in the sale of alcohol keeping in their possession two jerrycans. CW5 who detected the case was not examined to prove the case. He had not made any investigation to identify the other accused. The only evidence adduced by PW3 is that he had made certain investigation with regard to the involvement of the 1st accused. The 1st accused has been acquitted by the trial court. PW3 admitted that he was not in a position to identify the appellant. In this context, it has to be noted that PW1, who is an attester of Ext.P1 seizure mahazar, was turned hostile to the prosecution. Hence, there is no proper evidence to prove the identity of the accused. There is no evidence to show that MO1 and MO2 were identified by any witness, including PW1 and PW3. In the aforesaid circumstances, this Court is of the view that the appellant deserved to be acquitted on the grant of benefit of doubt.

5. Hence, the conviction and sentence ordered against the appellant are set aside and the appeal is allowed. Therefore, the appellant shall be released forthwith unless required in any other case.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 759/2006

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Judgment
14-11-2006